

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.: G807346

JASON RASBURRY, INC.,
EMPLOYEE CLAIMANT

WELSPUN PIPES,
EMPLOYER RESPONDENT

TWIN CITY FIRE INSURANCE,
INSURANCE CARRIER/THIRD PARTY ADMINISTRATOR RESPONDENT

OPINION FILED MAY 24, 2021

Hearing held before Administrative Law Judge Chandra L. Black, in Little Rock, Pulaski County, Arkansas.

Claimant, pro se, not appearing.

Respondents represented by Mr. A. Gene Williams, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the Respondents' Motion to Dismiss for Failure to Prosecute, on May 12, 2021 in the above-styled claim pursuant to Dillard v. Benton County Sheriff's Office, 87 Ark. App. 379, 192 S.W. 3d 287 (2004), for a determination of whether this claim should be dismissed due to the Claimant's failure to timely prosecute it under the provisions of Ark. Code Ann. §11-9-702 (Repl. 2012) and/or Arkansas Workers' Compensation Commission Rule 099.13.

The record consists of the transcript of the May 12, 2021 hearing. The entire Commission's file has been made a part of the record. It is hereby incorporated herein by reference.

BACKGROUND

The record reflects the following procedural history:

The Claimant's former attorney filed a Form AR-C with Commission on October 30, 2018

requesting workers' compensation benefits on behalf of the Claimant. Per this Form AR-C, the Claimant asserted his entitlement to both initial and additional indemnity and medical benefits. The alleged date of his accidental injury was September 29, 2018. The Claimant's alleged accidental injury was described as: "During the course and scope of his employment, he suffered injuries to his left knee."

It appears that on or about November 14, 2018, the Respondents filed a Form AR-2 with the Commission controverting this claim in its entirety. Specifically, the Respondents wrote: "Denying medical and indemnity benefits due to a lack of medical evidence suggesting a work-related injury."

On November 27, 2018, the Commission sent Prehearing Questionnaires and Notices to the parties, with deadlines for filing a written response.

The Claimant filed a second Form AR-C on December 4, 2018. He requested only initial benefits. His alleged date of injury remained September 29, 2018. According to this claim, the Claimant had not received any pay since his alleged work-related incident.

On December 3, 2018, the Claimant's attorney filed a motion to withdraw from representing the Claimant in this matter. The Commission entered an order on January 2, 2019, granting the Claimant's attorney motion to withdraw as counsel of record for the Claimant.

On January 3, 2019, the Commission returned the file to the Commission's general files. Since that time, the Claimant has failed to request a hearing on the merits in his claim for workers' compensation benefits.

On February 8, 2019, the Respondents filed with the Commission, a Respondents' Motion to Dismiss for Failure to Prosecute, with a Certificate of Service to the Claimant. On February 13,

2019, the Commission sent a notice to the Claimant letting him know of the Respondents' motion, with a deadline for filing a written response and/or objection.

The Claimant wrote a letter to the Commission on March 5, 2019 objecting to the dismissal. He also requested a hearing. Therefore, on March 5, 2019, the Commission again sent Prehearing Questionnaires and Notices to the parties, with deadlines for filing a response for the second time.

A prehearing telephone conference was scheduled with the parties for April 24, 2019. However, at the time of the prehearing telephone conference, the Claimant was unavailable. In fact, the Claimant's mailbox was full, and he was not accepting messages. However, the Respondents appeared through their attorney. Since the Claimant did not appear for the telephone conference, the file was returned to the Commission's general files.

Subsequently, on August 16, 2019, the Respondents filed with the Commission, another Respondents' Motion to Dismiss for Failure to Prosecute, with a Certificate of Service to the Claimant. On August 20, 2019, the Commission sent a notice to the Claimant letting him know of the Respondents' motion, with a deadline of twenty days from the date of the notice, for filing a written objection.

The Claimant wrote the Commission on September 3, 2019, stating that he was previously unavailable for the prehearing telephone conference because he was incarcerated. The Claimant stated that he would be released in seven months. As a result, the Claimant requested an extension for trial on his workers' compensation claim.

Therefore, the Respondents' motion was held in abeyance. On October 21, 2019, the file was returned to the Commission's general files pending the Claimant's release from prison.

On December 5, 2019 (filed on December 9, 2019), the Claimant wrote the following letter to the Commission. Specifically, the Claimant wrote, in relevant part: “My name is Jason Rasburry G07346 I am requesting a hearing.”

Therefore, on December 19, 2019, the Commission once again forwarded Prehearing Questionnaires and Notices to the parties, with deadlines for filing an answer for the third time.

On February 10, 2020, a prehearing telephone conference was scheduled with the parties for March 11, 2020. A prehearing telephone conference was conducted before the Commission with the parties as scheduled. The claim was set for a hearing, on the merits for May 27, 2020, at the Arkansas Workers’ Compensation Commission, in Little Rock.

Due to the COVID-19 Public Health Crisis, there was no action taken on the claim.

Subsequently, on May 27, 2020, the Commission scheduled a prehearing telephone conference, with the parties for June 10, 2020.

At the time of the June 2020 prehearing telephone conference, the Claimant agreed to complete and return discovery to the Respondents’ attorney. The Claimant requested an additional two weeks to retain legal representation in this matter. The Commission granted the Claimant’s request. As a result, action was deferred on the claim pending another prehearing telephone conference. During the prehearing telephone conference, counsel for the Respondents scheduled the Claimant’s deposition for June 17, 2020.

On July 8, 2020, the Commission scheduled another prehearing telephone conference with the parties. However, at the time of the prehearing telephone conference, the Claimant was not reachable by telephone. As a result, the claim was returned to the Commission’s general files.

There was no action taken by the Claimant to prosecute his claim.

Therefore, on January 11, 2021, the Respondents filed a Motion to Dismiss, with the Commission. On that same day, the Commission sent a letter to the Claimant notifying him of the Motion, with a deadline of February 1, 2021 for filing a written response-objection with the Commission.

However, the Claimant failed to file a written response with the Commission by February 1. Therefore, on February 3, 2021, the Commission sent a Notice of Hearing to the parties notifying them that a hearing had been scheduled for March 3, 2021, on the Respondents' motion.

However, on February 3, 2021, the Claimant sent an email to the Commission stating that he wished to reopen his claim.

As a result, on February 5, 2021, the Commission canceled the hearing and started the prehearing process. The Claimant failed to file a timely Prehearing Questionnaire Response. Therefore, on March 23, 2021, the file was returned to the Commission's general files.

Still, there was no action taken by the Claimant to prosecute his claim for workers' compensation benefits.

On March 26, 2021, the Respondents filed a Respondents' Fourth Motion to Dismiss, with Certificate of Service to the Claimant.

The Commission sent a notice to the Claimant on March 29, 2021 informing him of Respondents' motion, with a deadline of April 19, 2021 for filing a written objection to the motion.

There was no response from the Claimant.

Therefore, on April 20, 2021, the Commission sent a Hearing Notice to the parties informing them that the matter had been scheduled for a hearing on the Respondents' motion. Said hearing was scheduled for May 12, 2021, at the Commission, in Little Rock.

Still, there was no response from the Claimant. Information obtained by the Commission from the United States Postal Service shows that both notices were delivered to the Claimant's address of record with the Commission.

Nevertheless, on May 12, 2021, a hearing was in fact conducted on the Respondents' Fourth Motion to Dismiss, on the within claim due to a lack of prosecution.

During the hearing, counsel for the Respondents noted the following: that this is their Fourth Motion to Dismiss; during the last two years they repeatedly asked for dismissal for lack of prosecution; that on occasion the Claimant has objected, and on other occasions not objected to the dismissal; and that the Claimant has failed to appear for prehearing telephone conferences and has not responded to some of the Prehearing Questionnaires. Therefore, in view of the pattern of non-responsiveness and the lapse of nearly two and half years since the claimed injury date, counsel moved to dismiss the claim for lack of prosecution.

DISCUSSION

Arkansas Workers' Compensation Commission Rule 099.13 reads: Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution. *See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996) (discussion Arkansas Workers' Compensation Commission Rule 099.13).

A review of the evidence shows that the Claimant has had ample time to pursue his claims for workers' compensation benefits. However, he has failed to do so. The Claimant has failed to respond to the written notices of this Commission about the Respondents' most recent motion. Moreover, the Claimant failed to appear at the hearing to object to the dismissal.

Therefore, based on my review of the Respondents' fourth motion for dismissal of the within claim, and considering the Claimant's failure to respond to the notices of this Commission, his lack of objection to this dismissal, and all other matters properly before the Commission, I find that the Respondents' Fourth Motion to Dismiss these claims should be and is hereby granted under Rule 099.13. Accordingly, the above- styled matter is dismissed without prejudice to the refiling within the specified limitation period.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record as a whole, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. §11-9-704 (Repl. 2012).

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On or about, October 2018, the Claimant's former attorney filed with the Commission, a Form AR-C for both initial and additional workers' compensation benefits due to an alleged injury on September 29, 2020.
3. That the Claimant filed a second claim for benefits with the Commission on December 4, 2018, for the same alleged work-related accident.
4. Subsequently, there was no bona fide action taken by the Claimant to prosecute his claims.
5. Ultimately, on March 26, 2021, the Respondents filed with the Commission, a Respondents' Fourth Motion to Dismiss due to a lack of prosecution.
6. The Commission gave the Claimant notice of the motion. There was no response from Claimant. Ultimately, a hearing was scheduled on the Respondents' motion.
7. Said hearing was held on May 12, 2021, for a ruling on the Respondents' Fourth Motion to Dismiss. The Claimant failed to appear for the hearing; although appropriate notice of the hearing was had on all the parties in the manner as prescribed by law to their last known address.
8. The Claimant has had ample time to prosecute his claim for workers' compensation benefits, but he has failed to do so. Moreover, the Claimant

has failed to respond to the written notices of this Commission; and has not objected to the dismissal.

9. That the Respondents' Fourth Motion to Dismiss should be granted pursuant to Rule 099.13, without prejudice, to the refileing of the claim within the specified limitation period.

ORDER

In accordance with the foregoing Findings and Conclusions of Law, I have no alternative but to dismiss this claim for workers' compensation benefits. This claim is hereby respectfully dismissed pursuant to Rule 099.13, without prejudice to the refileing of this matter within the specified limitation period.

IT IS SO ORDERED.

CHANDRA L. BLACK
Administrative Law Judge